

**IN THE COURT OF APPEALS OF IOWA**

No. 3-533 / 13-0556  
Filed May 30, 2013

**IN THE INTEREST OF D.D.,  
Minor Child,**

**J.D., Father,  
Appellant,**

**J.H., Mother,  
Appellant.**

---

Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor,  
District Associate Judge.

A mother and father separately appeal from the termination of their  
parental rights. **AFFIRMED ON BOTH APPEALS.**

J. David Zimmerman, Clinton, for appellant father.

Clayton E. Grueb, Clinton, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney  
General, Mike Wolf, County Attorney, and Cheryl Newport, Assistant County  
Attorney, for appellee State.

Marsha Arnold, Davenport, attorney and guardian ad litem for minor  
child.

Considered by Doyle, P.J., and Danilson and Mullins, JJ. Tabor, J., takes  
no part.

**DOYLE, P.J.**

A mother and father separately appeal from the order terminating their parental rights. Upon our de novo review, we affirm on both appeals.

***I. Background Facts and Proceedings.***

J.D. is the father and J.H. is the mother of D.D., born in April 2012. The child came to the attention of the Iowa Department of Human Services after it was reported the child had tested positive for cocaine at birth. The mother admitted she had been using cocaine twice a week for at least two years. She also admitted to smoking marijuana in the past. The father initially denied any history of illegal drug usage, but later reported he snorted cocaine one to two times per week, and he had used cocaine in the past.

The child was voluntarily placed in foster care, and a safety plan was completed. The parents were to have drug evaluations, as well as supervised contact with the child. The parents would be denied contact if it was believed they were under the influence of illegal substances. Both parents were offered services during the pendency of the case for reunification, but ultimately they failed to make any progress, and the child remained in foster care.

In October 2012, the juvenile court granted the parents ninety more days to work towards reunification with the child. However, both parents were arrested in November 2012 on numerous charges, including theft, identity theft, and forgery. The father had thirty-four counts asserted against him, and the mother had sixteen counts asserted against her. Thereafter, the State filed a petition to terminate the parents' parental rights.

A hearing on the petition was held in March 2013. At that time, both parents were incarcerated. Following the hearing, the juvenile court entered an order terminating both parents' rights under Iowa Code section 232.116(1) paragraphs (d), (e), and (h) (2011).

Both parents now appeal, separately. We review their claims de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

## ***II. Discussion.***

### ***A. The Mother.***

The mother asserts the State failed to prove grounds for terminating her parental rights, and the juvenile court erred in denying her additional time for reunification. We disagree.

Although the mother's rights were terminated pursuant to section 232.116(1) paragraphs (d), (e), and (h), we need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). In this case, we choose to focus our attention on section 232.116(1)(h). Under that section, parental rights may be terminated if the court finds by clear and convincing evidence that the child is three years of age or younger, has been adjudicated a CINA, has been removed from the physical custody of his parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days, and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents at the present time. Iowa Code § 232.116(1)(h).

The mother does not dispute that the first three elements of this ground were proved. Rather, she asserts that had the juvenile court given her additional

time to resolve her criminal matters, “there would have been a very good chance that [the child] could have been returned to his mother’s care.” While the law requires a “full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,” this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The legislature incorporated a six-month limitation for children adjudicated a CINA aged three and younger. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that “the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights.” *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

By the time of the termination hearing, the child had been out of the mother’s care for about a year and almost the entirety of the child’s life. The statutory six-month period expired with little evidence that she could provide the necessary stability and sobriety to safely parent her child. The mother was even granted additional time in this case to achieve sobriety so she could be reunited with the child, but she did not take advantage of the services and substance abuse treatment offered to her. Instead, she was arrested on several criminal charges. Only then, to avoid incarceration, did she show interest in treatment. Nevertheless, she could not stay out of trouble and ended up violating her pretrial release and getting discharged from the substance abuse treatment center.

The mother now reports she is making progress towards treating her substance addiction, and the child might be able to be returned to her care

sometime in the future. While we hope the mother is successful, her efforts are simply too little too late for us to have any confidence in her sobriety at this time or for the foreseeable future. “A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting.” *C.B.*, 611 at 494. Children are not equipped with pause buttons. “The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Children simply cannot wait for responsible parenting.” *In re C.H.*, 652 N.W.2d 144, 151 (Iowa 2002) (internal quotation marks and citations omitted). “We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children.” *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997) (affirming termination based on the lack of “significant and meaningful contact” while father was in prison). Permanency for this child should not be deferred until the mother reestablishes herself as a law-abiding sober citizen. Under the circumstances presented, we find the State proved by clear and convincing evidence the child could not be safely returned to the mother’s care at the time of the termination hearing. We therefore agree with the juvenile court that termination of the mother’s parental rights was proper under Iowa Code section 232.116(1)(h).

The mother also argues the juvenile court abused its discretion in not granting her additional time for reunification. A juvenile court has the discretion to continue a child’s placement out of the home for an additional six months if it determines the need for removal will no longer exist at the end of the additional period. See Iowa Code § 232.104(2)(b). However, the evidence in this record

does not allow such a determination. The court granted the mother additional time in October 2012, only to have the mother arrested on numerous criminal charges the next month. We find no abuse of discretion under the circumstances of this case. Accordingly, we affirm the ruling of the juvenile court terminating the mother's parental rights.

***B. The Father.***

The father asserts the termination of his parental rights was not in the best interests of the child. He argues he and the child had a very strong bond. Additionally, the father contends his parental rights need not be terminated because placement of the child with relatives was an option. We disagree.

If a statutory ground for termination is determined to exist, the court may terminate a parent's parental rights. *P.L.*, 788 N.W.2d at 37. In considering whether to terminate, the court must then apply the best-interest framework established in section 232.116(2). *Id.* The legislature highlighted as primary considerations: the children's safety, the best placement for furthering the long-term nurturing and growth of the children, and the physical, mental, and emotional condition and needs of the children. *Id.*; see also Iowa Code § 232.116(2). "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the child's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the child if the child is returned to the parent. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that

determination is to be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493–94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

Additionally, even if a court finds termination appropriate under section 232.116(2), a court need not terminate the relationship between the parent and children if any of the enumerated circumstances contained in section 232.116(3) exist. See *P.L.*, 778 N.W.2d at 37. However, the exceptions set forth in 232.116(3) have been interpreted as permissive, rather than mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39. In determining whether to apply this section, we consider the child's long-term and immediate best interests. See *P.L.*, 778 N.W.2d at 37. A court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

Under the facts and circumstances in this case, and considering the child's long-term and immediate best interests, we agree with the juvenile court that termination of the father's parental rights is in the child's best interests, and we find no abuse of discretion in the court's declination to invoke section 232.116(3). Here, the father minimally participated in services, and he has not addressed his substance abuse issues. Although the father asserts he and the child share a bond, the child has been out of his parents' care for almost the entire year of his life, and the father has only had off and on visitation with the

child, missing many visits. Additionally, although placement with relatives may be an adoptive option for the child, section 232.116(3)(a) is not applicable here because the child was not in the custody of relatives at the time of the termination hearing. Given the father's history of drug use and lack of progress in the case, along with numerous pending criminal charges, delaying permanency for this child is simply not warranted. We cannot maintain the father-child relationship where there exists only a possibility the father will become a responsible parent sometime in the unknown future. The child needs and deserves permanency. The child is doing very well in the foster family's home, and adoption by relatives is still an option at this point. For the foregoing reasons, we conclude termination was in the child's best interests as set forth under the factors in section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. Accordingly, we affirm the juvenile court's termination of the father's parental rights.

**AFFIRMED ON BOTH APPEALS.**